IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7624 OF 2005

Sanjay Ashok Wakarekar Applicant

versus

The State of Maharashtra Respondent

Shekhar Ingawale for applicant.

K.V.Saste, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 30th November 2005

PC :

1. Heard Shri Ingwale for applicant and Shri Saste for respondent.

2. The application is made by the applicant who is arrayed as an accused no.5 in connection with CR No.180/2004 registered with Juna Rajwada Police Station, Kolhapur. Although charge is under section 302 R/W Section 34 of IPC against all the persons, from the statements recorded till date and the materials collected, it is clear that the only role attributed to the present applicant (accused no.5) is that he had

travelled along with the main accused nos.1 to 4 from Kolhapur to a place in Belgaum District of Karnataka State. The applicant has been arrested and is presently in custody for almost a year.

3. The co-accused arrayed on similar allegations (one Birju Golandaj), has been enlarged on bail by the Trial Court by an order dated 18th June 2005.

4. Similar request of the applicant has, however, been rejected by the Trial Court. The observation made in the order passed on 2nd April 2004 and 12th July 2005 does not disclose specific role assigned to the applicant but proceeds on the basis that the deceased was assaulted by the accused after his acquittal in a murder case. The Court proceeds on a presumption that these persons have taken law in their hands and when a serious offence is committed, they are likely to tamper with the prosecution witnesses. The antecedents are referred to.

5. However, the fact remains that when identically situated accused as that of the present applicant is enlarged on bail, the principle of parity, at least in the present

facts and circumstances, ought to have applied to the applicant as well.

6. As far as present applicant is concerned, it is stated that he is residing at the address mentioned in the cause title and is a Cable Operator. He has fixed place of business. As far as present applicant is concerned, there are no antecedents. The applicant (accused no.5) therefore, deserves to be enlarged on bail.

7. Accordingly, following order :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.180/2004 registered with Juna Rajawada Police Station, Kolhapur, subject to furnishing a personal bond of Rs.15,000/- (Rs.Fifteen thousand only) with one surety in the like sum;

(ii) The applicant shall also abide by same conditions as are imposed on co-accused Birju Golandaj by the Trial Court vide it’s order dated 18th June 2005. However, the applicant shall be at liberty to apply for modification of the condition pertaining to leaving the jurisdiction of Trial Court at a subsequent stage;

(iii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)